

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LESHAUN BENJAMIN,

Plaintiff,

v.

Case No. 21-cv-677-pp

KYLE DEMERS,

Defendant.

**ORDER DISMISSING CASE WITH PREJUDICE FOR PLAINTIFF'S
REPEATED FAILURE TO COMPLY WITH COURT ORDERS AND
DILIGENTLY PROSECUTE CASE**

On September 30, 2022, the court granted plaintiff Leshaun Benjamin's motion for reconsideration, reopened this case and screened the amended complaint. Dkt. No. 36. The court noted that the amended complaint listed the plaintiff's current address as the Milwaukee Secure Detention Facility, but that the Department of Corrections website showed he had been released from that facility on September 19, 2022. Id. at 2 & n.1. The court noted that the plaintiff had failed to notify the court of his release or provide the court with his new address. Id. Although the court allowed the plaintiff to proceed on his amended complaint, it gave the following warning:

The court reminds the plaintiff that if he fails to file documents or take other required actions by the deadlines the court sets, the court may dismiss the case based on his failure to diligently pursue it. ***The plaintiff must promptly notify the court if he is released from custody or transferred to a different institution. If the plaintiff fails to keep the court advised of his whereabouts, or***

***if a court order is again returned to the court as undeliverable,
the court may dismiss this case without further notice.***

Id. at 9 (emphasis in original). That order was not returned to the court, as a previous order sent to the plaintiff had been. Id. at 1-2.

On November 14, 2022, the court received a typed document from the plaintiff titled, “Status Report of the Plaintiff, Lashaun Benjamin.” Dkt. No. 40. This document, which the plaintiff signed, stated the following:

1. Pursuant to the instructions of the Court, the Plaintiff will send all of his pleadings and other official submissions to the Office of the Clerk of Court for the Eastern District of Wisconsin; and
2. The Plaintiff further affirms that he will keep the Court updated on his physical location throughout the pendency of this litigation, including an accurate and current mailing address at and through which he may be contacted. At present, that mailing address is: 2825 North 16th Street, Milwaukee, Wisconsin, 53206.

Id. at 1. Court staff updated the docket with the address the plaintiff listed in the status report.¹

On December 1, 2022, the court issued a scheduling order setting deadlines for the parties to complete discovery and file dispositive motions.

¹ The plaintiff filed similar, signed documents in his other cases pending before the court. See Case No. 18-cv-570-pp, Dkt. No. 79 (filing by counsel providing notice of the plaintiff’s “Mailing/Residential Address” at 2825 North 16th Street, Milwaukee, Wisconsin, 53206); Case No. 22-cv-191-pp, Dkt. No. 8 (status report assuring the court that the plaintiff “will keep the Court updated on his physical location throughout the pendency of this litigation, including an accurate and current mailing address at and through which he may be contacted” and providing the same address on 16th Street in Milwaukee); Case No. 22-cv-431-pp, Dkt. No. 41 (motion “to Reopen Case Upon Commitment to Timely and Fully Prosecute” accepting responsibility for the plaintiff’s failure to comply with court orders, assuring the court that the plaintiff will “remedy his past and recent delinquencies in the prosecution of his claims in this case by abiding by all of the orders of the Court” and providing the same address on 16th Street in Milwaukee).

Dkt. No. 43. The court mailed that order to the plaintiff at the address on 16th Street in Milwaukee that he had provided in the November 14, 2022 status report. But on December 12, 2022, the court received that order back with the notation: “No Such Number; Unable to Forward.” Dkt. No. 44. That is the same notation that was on the August 23, 2022 order that had been returned to the court. Dkt. No. 34.

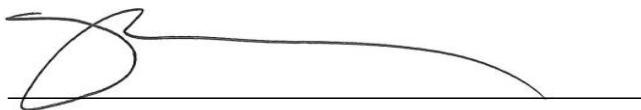
The court advised the plaintiff in the September 30, 2022 screening order that he “***must promptly notify the court***” if his address or incarceration status changed. Dkt. No. 36 at 9 (emphasis in original). The court warned the plaintiff that “***If the plaintiff fails to keep the court advised of his whereabouts, or if a court order is again returned to the court as undeliverable, the court may dismiss this case without further notice.***” Id. (emphasis in original). The plaintiff’s signed status report assured the court that the plaintiff would follow those instructions and provide “an accurate and current mailing address at and through which he may be contacted.” Dkt. No. 40 at 1. Despite that assurance, the plaintiff has not complied with court orders and has provided the court with an inaccurate or nonexistent address. The DOC inmate locator does not show that the plaintiff is currently incarcerated at any DOC facility. His most recent status is his release from the Milwaukee Secure Detention Facility on September 19, 2022, as noted above and in the previous order. Nor does the Milwaukee County Jail website list the plaintiff as a detainee. The court does not know the plaintiff’s status, does not have a current address and has no way to reach him.

The court will enforce the September 30, 2022 order and will dismiss this case for the plaintiff's failure to comply with court orders and provide a current mailing address. Because the court previously dismissed and reopened this case and advised the plaintiff on multiple occasions that he must follow court orders, this dismissal will be with prejudice. See Civil Local Rule 41(c) (E.D. Wis.) ("Whenever it appears to the Court that the plaintiff is not diligently prosecuting the action . . . the Court may enter an order of dismissal with or without prejudice."). The court will not reopen this case again unless the plaintiff provides a written explanation for his repeated failure to comply with court orders—despite his status report assuring the court he would follow its orders—and demonstrates extraordinary circumstances beyond his control.

The court **ORDERS** that this case is **DISMISSED WITH PREJUDICE** under Civil L.R. 41(c) for the plaintiff's repeated failure to comply with court orders and diligently prosecute this case. The clerk will enter judgment accordingly.

Dated in Milwaukee, Wisconsin this 27th day of December, 2022.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge